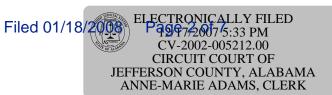
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WADE TUCKER ET AL VS RICHARD M SCRUSHY ET AL	D M Name of Filing Party: C001 - TUCK				
Name, Address, and Telephone No. of Attorney or Party. If Not Repr JOHN SOMERVILLE 11 OAK STREET BIRMINGHAM, AL 35213 Attorney Bar No.: SOM007			rguments R	Reques	ted
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Check here if you have filed or are filing contemoraneously with this motion an Affidavit of Substantial Hardship 12/17/2007	5:31:23 F	PM			Attorney or Party:  SOMERVILLE

<sup>\*</sup>This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

<sup>\*\*</sup>Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



## IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA (HEALTHSOUTH CORPORATION 2002 DERIVATIVE LITIGATION)

WADE IUCKER, derivatively for the	)
Benefit of and on behalf of the Nominal	)
Defendant HealthSouth Corporation,	)
Plaintiff,	)
-VS-	)
RICHARD M. SCRUSHY, et al., Defendants.	) ) CIVIL ACTION NO. CV-02-5212
UBS SECURITIES LLC, Counterclaim Plaintiff,	) ) )
Country Chairm 1 Idinterity,	)
-VS-	ý
	)
HEALTHSOUTH CORPORATION,	)
Counterclaim Defendant.	)

# PLAINTIFF'S MOTION TO STRIKE UBS SECURITIES LLC'S AMENDED ANSWER TO THE THIRD COMPLAINT AND THE SUPPLEMENTAL AND FOURTH AMENDED COMPLAINT

COMES NOW Plaintiff, Wade Tucker ("Plaintiff"), derivatively on behalf of the Nominal Defendant, HealthSouth Corporation and, pursuant to Alabama Rule of Civil Procedure 12(f), moves to strike UBS Securities LLC's ("UBS") Amended Answer to the Third Amended Complaint and the Supplemental and Fourth Amended Complaint as follows:

- 1. UBS's amendment is inconsistent with and contrary to UBS's prior representations that UBS Securities, LLC was the only proper party defendant with regard to Tucker's claims:
- 2. UBS's amendment is inconsistent with and contrary to UBS's prior representations that UBS Securities, LLC loaned money to MedCenterDirect.com ("MCDC");

3. UBS's amendment is an improper attempt by UBS to circumvent the rulings of this Court in the Modified Order Denying Motion to Dismiss Brought By UBS to the effect that UBS Securities, LLC is the only proper party defendant with regard to Tucker's claims;

4. UBS's amendment is an improper attempt by UBS to circumvent the rulings of this Court in the Modified Order Denying Motion to Dismiss Brought By UBS to the effect that all claims of UBS against HealthSouth should be litigated in this coordinated proceeding; and

5. UBS's amendment is an improper attempt by UBS to gain an unfair advantage in connection with this litigation and with litigation brought by UBS in New York State (litigation which should have been brought as a compulsory counterclaim here).

6. Tucker reserves the right to assert additional arguments, file additional materials and a file a Memorandum of Law in support of this Motion.

#### **NOTICE OF HEARING**

This motion has been set for hearing at 1:30 p.m. on January 23, 2008 before the Honorable Allwin E. Horn, III.

Done this 17<sup>th</sup> day of December, 2007.

/s/ John Q. Somerville
One of the attorneys for Plaintiff, Wade
Tucker

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been served on this the 17<sup>th</sup> day of December, 2007 by electronic means to the attorneys listed on Appendix 3 (shown below) pursuant to the Court's Order and by U.S. mail, postage prepaid, and properly addressed to the following:

Appendix 3: All Counsel in Tucker v. Scrushy Pending Before The Honorable Allwin E. Horn III

<u>Party</u>	Name of Person to Serve	Email Address
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HealthSouth Corporation  Peyton D. Bibb, Esq. Julia Boaz Cooper, Esq. Edward P. Welch, Esq. Stephen Dargitz, Esq. Edward B. Micheletti, Esq. Marc Ayers, Esq. Benjamin Moncrief, Esq. Hope Cannon, Esq. Martin, Michael D.  Martin, Michael D.  John H. Cooper, Esq. Edweves, Esq. Robert W. Fleishman, Esq. Givens, C. Sage Strong, George H. Newhall, Charles W. III Chamberlin, John S. Gordon, Joel C.  Peyton D. Bibb, Esq. Julia Boaz Cooper, Esq. Jibcooper@bradleyarant.com sdargitz@skadden.com ewelch@skadden.com ewelch@skadden.com mayers@bradleyarant.com mayers@bradleyarant.com bmoncrief@bradleyarant.com bmoncrief@bradleyarant.com jcooper@sirote.com rfleishman@steptoe.com jmh@hsy.com pgluckow@stblaw.com akimmel@stblaw.com akimmel@stblaw.com	om
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